

August 12, 2019

David A. Perez
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VIA E-MAIL

Michelle Chen
Legal Counsel, Office of the Mayor
City of Seattle
600 4th Avenue
Seattle, WA 98104

**Re: Inappropriate Communications from Mayor's Office, and Potential Interference
with Community Police Commission's Independent Oversight**

Dear Ms. Chen:

I write in my capacity as outside counsel for the Community Police Commission ("CPC") to raise several issues concerning interactions between the Mayor's Office and the CPC. Please direct all communications concerning these issues to me.

A. Communications Between the Mayor's Office and CPC.

Counsel for the Mayor and the Mayor herself have communicated with the CPC in ways that are inconsistent with Rule 4.2 of the Rules of Professional Conduct ("RPC"). You are subject to the RPC as counsel to the Mayor. The Mayor is subject to the RPCs, not only because she is an attorney, but also because she has repeatedly appeared to represent the City, in a legal capacity, in *United States of America v. City of Seattle*, No. 2:12-cv-01282-JLR ("the Litigation").

RPC 4.2 states in relevant part that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter." The rule is designed to "protect[] a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation." RPC 4.2, cmt. 1.¹

¹ You previously suggested to me that RPC 4.2 does not apply because CPC is not a "party" to the Litigation. You must have misspoken because that is not the standard. RPC 4.2 is not triggered only where a represented client is formally a party to a litigation—otherwise its application would be extremely narrow, and the rule would not apply

Although communications between the Mayor's Office and the CPC on other topics are routine, necessary and inevitable, moving forward, communications concerning the City's compliance with the Consent Decree must be consistent with RPC 4.2. Two recent examples illustrate our concerns.

The first relates to a text message that you sent my client on Thursday at 5:14 p.m., criticizing the CPC's decision to make public a letter containing the CPC's feedback on the Mayor's proposed methodology to achieve compliance with the Consent Decree. In your message you write, "I don't know what 'collaboration' looks like with CPC. My experience so far has been nothing but bombs detonated via media." Exhibit A. This message addresses issues about which the CPC has sought and retained counsel—directly contravening RPC 4.2. *See e.g.*, RPC 4.2, cmt. 7 ("In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter . . .").

In fact, the day after you sent that message, you reached out to me to relay the Mayor's views on this topic, "bringing it to [my] attention as counsel to CPC." Exhibit B. That you would reach out to me "as counsel" on the same topic about which you were directly messaging my client is an acknowledgement that your communications were inconsistent with RPC 4.2.

The second example relates to the Mayor's numerous and ongoing *ex parte* communications with CPC commissioners. We have reason to believe that you and the Mayor have elicited privileged information from CPC commissioners concerning discussions held during executive session. *See e.g.*, Exhibit B ("Also, it has come to our attention that what was reported by the media is not what some Commissioners believed they were voting on and the process for which this vote occurred has raised concerns."). The discussion about the CPC's public vote took place during an executive session, during which a privilege conversation was held. The mere prospect that the Mayor's Office would elicit privileged information from CPC commissioners is troubling. The effect is to impair CPC's ability to engage in candid and frank discussions with its counsel.

Even if such communications were not initiated by the Mayor's Office, both you and the Mayor had an obligation to stop and prevent the inadvertent and unauthorized disclosure of privileged information. *See* RPC 4.2, cmt. 3 ("The Rule applies even though the person represented by a lawyer initiates or consents to the communication. A lawyer must immediately terminate

to mergers, contract negotiations, or pre-litigation disputes. In fact, RPC 4.2 applies to clients who have "chosen to be represented by a lawyer *in a matter*." RPC 4.2, cmt. 1. That "matter" could be a contract negotiation, an asset purchase, a pre-litigation dispute, or an active litigation. That CPC is participating as *amicus curiae*, rather than as a party, is of no consequence to RPC 4.2's clear application to this matter.

communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.”); *id.*, cmt. 7.

These are hardly the only examples; they are simply the most recent. In light of the above, we have three requests:

1. Moving forward, the Mayor’s Office must not conduct any further *ex parte* communications or meetings with the CPC relating in any way to the Litigation. Any such communications must be coordinated with CPC’s legal counsel.
2. By this Friday, August 16, 2019, please disclose to me any instances since May 1, 2019, where CPC information that reasonably should have been understood to be legally privileged (i.e., CPC owned the privilege) was disclosed to the Mayor’s Office during an *ex parte* meeting or through some other means (*e.g.*, e-mail or text message). Any further disclosures must be disclosed immediately to CPC’s counsel.
3. By August 23, 2019, please produce all documents and communications relating in any way to the Mayor’s Office’s meetings and communications with any CPC staff or commissioners, including without limitation notes, communications, or other documents reflecting the information shared during such meetings. *See* SMC 3.29.330(D) (“Without the necessity of making a public disclosure request, CPC may request and shall timely receive from other City departments and offices, including SPD, information relevant to its duties under this Chapter 3.29 that would be disclosed if requested under the Public Records Act.”).

Your document production can be sent directly to my attention. Please let me know if you would like to confer about these requests.

B. Retaliatory Behavior Against and/or Interference with the CPC Violates the Accountability Ordinance

By design, the CPC is part of an *independent* oversight system. *See* Accountability Ordinance, SMC 3.29, Preamble (“Whereas, it is The City of Seattle’s intent to ensure by law a comprehensive and sustainable *independent* oversight system . . .”) (emphasis added); *id.*, SMC 3.29.010(A) (“It is The City of Seattle’s intent to ensure by law a comprehensive and sustainable approach to *independent* oversight . . .”) (emphasis added). *See also* SMC 3.29.330 (“CPC is self-governing and functionally independent.”).

In fact, CPC has “an *obligation* to exercise independent judgment and offer critical analysis in the performance of their duties.” SMC 3.29.030(A) (emphasis added). CPC is entitled to “exercise their responsibilities . . . without interference from any person, group, or organization,

including the Chief, other SPD employees, or other City officials.” *Id.* The Accountability Ordinance makes clear that retaliation “or harassment” “against employees of the Office of the CPC or CPC Commissioners . . . undermines the effectiveness of civilian oversight efforts by threatening the continued flow of information.” SMC 3.29.480(A). City officials “who violate these provisions may be subject to dismissal, discipline, or censure consistent with City and state laws.” *Id.*; *see also* SMC 3.29.030(A) (same).

We are concerned that the Mayor’s Office is violating these provisions by interfering with CPC decision-making processes through application of explicit and implicit pressure on Commissioners and staff, and through its *ex parte* communications. CPC is entitled to disagree with the Mayor, and indeed often must do so without interference or fear of reprisal or harassment. Any such interference or retaliation undercuts the CPC’s independence, undermines oversight, and violates the law. Even the appearance of interference or retaliation undermines CPC’s independence, thereby undermining the entire oversight system.

We are considering whether to refer our concerns to the Office of the Inspector General. *See* SMC 3.29.480 (“If retaliation is suspected, the Inspector General is authorized to open an investigation into the matter and refer a complaint to the appropriate authority.”). But in the meantime, we invite your office to meet with me and my client to discuss how to ensure that the Mayor’s Office does not interfere with, retaliate against, or otherwise harass the CPC for exercising its independent oversight responsibilities.

C. Duty to Preserve

Please preserve all documents and communications relating in any way to the issues outlined in this letter. Such preservations include but are not limited to communications with, about, and concerning the CPC, and any actions or plans the Mayor’s Office has discussed or taken relating in any way to the CPC. This preservation notice applies to information, documents, and communications contained on personal devices such as text messages and personal e-mails.

We look forward to addressing these issues with you in a productive and cooperative manner.

Very truly yours,



David A. Perez

DAP

EXHIBIT A

Touch to return to call 05:41



2 People >

Hi Michelle, thank you for the heads up. Please send your letter to the Commissioners directly to the CPC Co-Chairs as is protocol and what has been requested of you recently with your last email.

Isaac Ruiz - CPC

Great thx



Well, not great, but thx :)

Yesterday 5:14 PM

Michelle Chen

It is so disappointing that you shared CPC letter on draft methodology with media before mayor or city attorney. You didn't even give us a chance to incorporate the input into the final proposed methodology. I don't know what "collaboration" looks like with CPC. My experience so far has been nothing but bombs detonated via media.



iMessage



EXHIBIT B

From: [Chen, Michelle](#)
To: [Perez, David A. \(SEA\)](#)
Cc: [Holmes, Peter](#); [Cowart, Kerala T](#)
Subject: RE: Just called — when are you free?
Date: Monday, August 12, 2019 9:52:41 AM

David,

Wanted to give you a quick update. I learned that a meeting is in the works per Issac Ruiz's request to address the concern we talked about this weekend. Given that the meeting is happening with Mayor's office, I would ask you to reconsider sending a letter. I believe it would be much more productive for us to meet and discuss this concern since we do want to have a better relationship going forward.

Also, it is our goal to share the updated version of the methodology that reflects and captures the input from stakeholders before the filing on Thurs. It depends on how quickly 21CP can turn it around to City, but we've asked them to do this so we can share another version with CPC and Monitor.

Thanks and give me a call if you have questions.
Michelle

From: Perez, David A. (Perkins Coie) <DPerez@perkinscoie.com>
Sent: Friday, August 9, 2019 4:40 PM
To: Chen, Michelle <Michelle.Chen@seattle.gov>
Subject: RE: Just called — when are you free?

CAUTION: External Email

Michelle, I have to step out, but my cell phone is 206.618.4293. Feel free to give me a call to confer about the issues you outlined below. I'll be around this weekend, too, if you wish to chat then.

David

David A. Perez | Perkins Coie LLP

Partner

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

p: 206.359.6767

e: DPerez@perkinscoie.com

<http://www.perkinscoie.com/dperez/>

From: Perez, David A. (SEA)

Sent: Friday, August 09, 2019 4:30 PM
To: 'Chen, Michelle' <Michelle.Chen@seattle.gov>
Subject: RE: Just called — when are you free?

Hi Michelle,

I'm at my desk now if you'd like to chat. 206.359.6767

David A. Perez | Perkins Coie LLP

Partner

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Seattle, WA 98101-3099

p: 206.359.6767

e: DPerez@perkinscoie.com

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-----Original Message-----

From: Chen, Michelle <Michelle.Chen@seattle.gov>
Sent: Friday, August 09, 2019 4:27 PM
To: Perez, David A. (SEA) <DPerez@perkinscoie.com>
Subject: RE: Just called — when are you free?

Hi David,

Sorry we missed each other. I called this morning to let you know that the Mayor took extraordinary steps to level set when she met with CPC co-chairs, executive director, and commissioners. During those meetings she asked and received assurances from your client, that while we may have disagreements, that we would not make it a war of battling press releases and that they would give her a heads up before going to the media. Instead, we got calls from the media about CPC's letter before she received it. An article by the Seattle Times was written before the Mayor could even read the letter and respond to it. Again, the Mayor was given these assurances and we are bringing it to your attention as counsel to CPC. Also, it has come to our attention that what was reported by the media is not what some Commissioners believed they were voting on and the process for which this vote occurred has raised concerns, so we are thinking about whether to bring these issues to the attention of the Court.

Michelle

-----Original Message-----

From: Perez, David A. (Perkins Coie) <DPerez@perkinscoie.com>
Sent: Friday, August 9, 2019 9:55 AM
To: Chen, Michelle <Michelle.Chen@seattle.gov>
Subject: Just called — when are you free?

CAUTION: External Email

I'm stepping into a meeting but free up in about an hour.

David A. Perez
Partner
Perkins Coie LLP
206.359.6767

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